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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/617,917

07/10/2003

Wolfgang Neuberger

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/617,917	Applicant(s) NEUBERGER, WOLFGANG	
	Examiner david shay	Art Unit 3735.	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 3, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-13 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 3, 2006 has been entered.

Applicant argues that the Dabby reference was brought to the examiner's attention by applicant. While it is not clear exactly what bearing this has on the propriety of the rejection, the examiner must respectfully point out that there is no indication on the record that such is the case. The Dabby reference is not of record in the parent case, which did not claim oligomode fibers. While an IDS was filed in the instant case, there is no mention of the Dabby reference or any related patent therein. Further, the PTO-892 included with the first office action lists the Dabby reference. Regardless of the manner in which the examiner encountered the Dabby reference, it is still incumbent upon applicant to either define over the applied references or rebut the examiner's prima facie case of obviousness.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Parker and Dabby. Mc Daniel teaches a device and method for irradiating tissue to produce biostimulation using optical fibers, wherein any type of tissue can be irradiated. Parker teaches a light applicator including at least one waveguide with means to selectively leak radiation from multiple positions along the length thereof. Dabby teaches the use of oligomode optical fibers. It would have been obvious to the artisan of ordinary skill to employ a device and

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method as taught by Parker in the device and method of McDaniel, since McDaniel provides no particular structure for the fiber optic applicator, and thus, the person having ordinary skill in the art would look to the fiber optic light applicator art to find an appropriate form for the fiber optic suggested by McDaniel to take, and to employ an oligomode fiber as taught by Dabby, since this would reduce bending losses, as taught by Dabby, thereby leaving more of the light available to exit the fiber at the desired light emission points, thus producing a device and method such as claimed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Parker and Dabby as applied to claims 1-9 and further in combination with Diamantopoulos et al. Diamantopoulos et al. teach controlling the timing of pulses using a timer. It would have been obvious to the artisan of ordinary skill to employ the timer of Diamantopoulos et al in the method of McDaniel, since McDaniel provides no mechanism for timing the pulse application, thus producing a method as claimed.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Parker and Dabby and Prescott. The teachings of McDaniel, Parker, and Dabby are as set forth above. Prescott teaches applying laser therapy to a wound prior to covering the wound with a dressing. It would have been obvious to the artisan of ordinary skill to applying laser therapy to a wound prior to covering the wound with a dressing in the combined method of McDaniel, Parker, and Dabby, as taught by Prescott, since McDaniel provides specific protocol for dressing application, or to employ the parameters for treatment set forth in the method of McDaniel in the method of Prescott, since Prescott discloses no particular treatment parameters, and in either case to employ the applicator of Parker, since neither Prescott

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nor McDaniel teach any particular fiber structure for the fiber optic applicator, and to employ the fiber of Dabby, since neither Parker, Prescott, nor McDaniel teach any particular fiber structure for the fiber optic applicator, thus the person having ordinary skill in the art would look to the fiber optic art to find an appropriate form for the fiber optic suggested by Parker, Prescott, or McDaniel to take, and since the fiber of Dabby has lower bending losses, as set forth above, thus producing a method as claimed.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Parker and Dabby as applied to claims 1-9 and further in combination with Sullivan. Sullivan teaches lining the floor of an enclosure with treatment LEDs. It would have been obvious to the artisan of ordinary skill to employ the radiator layout of Sullivan in the method of McDaniel, since the layout of McDaniel is not critical and provides no unexpected results, and since this radiator configuration is equivalent to the use of vertical panels, as shown by Sullivan, thus producing a method as claimed.

Claim 14 objected to as depending from a rejected base claim. Claim 14 contains allowable subject matter and would be allowable if it were written in independent form, including all the limitations of the claim(s) from which it depends.

Applicant's arguments with respect to claim ^{1-9 and 11-13} ~~***~~ have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330